

2 to 24
ORIGINAL

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

PAUL TURPIN,) Civil No. 1:CV-01-0168
)
Petitioner,)
) (Judge Rambo)
v.)
)
IMMIGRATION & NATURALIZATION)
SERVICE,)
Respondent.)

24
6/11/01
FILED
HARRISBURG
JUN 08 2001
MARY E. D'ANDREA, CLERK
Per *[Signature]*
DEPUTY CLERK

EXHIBITS TO RESPONDENT'S SUPPLEMENTAL RESPONSE
TO PETITION FOR A WRIT OF HABEAS CORPUS

STUART E. SCHIFFER
Acting Assistant Attorney General
Civil Division

EMILY ANNE RADFORD
Assistant Director

JOSHUA E. BRAUNSTEIN
Office of Immigration Litigation
U.S. Department of Justice
Civil Division
P.O. Box 878
Ben Franklin Station
Washington, D.C. 20044

MARTIN C. CARLSON
UNITED STATES ATTORNEY

DULCE DONOVAN
Assistant U.S. Attorney
P.O. Box 11754
Harrisburg, PA 17108
(717) 221-4482

Attorneys for Appellee

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EXHIBIT 1

NEW YORK CITY POLICE DEPT ARREST REPORT RUN DATE 05/23/01 RUN TIME 10:30:56

DEFENDANT INFORMATION

ARREST ID: K97036290

NAME: TURPIN PAUL SEX: M RACE: BLACK DOB: 11/20/62 AGE: 34
AKA: CITIZ? YES POB: NEW YORK PHONE: ()ADDR: 53 CHAUNCEY ST BROOKLYN NY RES PCT: 081
SKIN TONE: DARK HGT: 5'07" WGT: 150 EYE COLOR: BROWN HAIR COLOR: BLACK
SOC STATUS: SINGLE SOC SEC #: DEFT/VICT RELAT: NONE
PHYSICAL COND: APPARENTLY NORMAL TYPE DRUG USED: NONE
OCCUPATIONAL AREA: OTHER
LICENSE/PERMIT TYPE (EXC DRIVER/OPR/REG): NO:
CALLS: NO: NAME: NO: NAME:
ORACLE# 17450995 NYSID# 4256978H FAX# KD026779 ARR.PROC: LIVE SCAN*****
NARRATIVE: AT T/P/D PERP WAS FOUND TO BE IN POSSESSION OF A Q
UANTITY OF CONTROLLED SUBSTANCE*****
CHARGES INFORMATION

	ATT	LAW	SEC	SUB	CLS	TYPE	CTS	DESCRIPTION
TOP CHARGE-->	N	PL	220.03	00	M	A	01	CPCS-7
TOTAL CHARGES								
COUNT = 01								

ARREST RELATED INFORMATION

DAT? NO

TIME 15:00 DATE 04/29/97 CMD 079 *****

WEAPON POSS/USED: NONE

ARREST LOC: 1058 BEDFORD AV

NUM OF ASSOC: 00

PROPERTY VOUCHERS: NONE

COMPLAINANT/UF-61/VICTIM INFORMATION

IS COMPL A CORP? NO OR PSNY? NO OR DISABLED? NO TOTAL VICTIMS = 00

COMPL NAME: SEX: RACE: AGE:

ADDR: TEL NUM: ()

AIDED NO: AIDED CMD: ACC NO: ACC CMD:

UF-61: NO: 999999 CMD: 079 SECTOR: ZZ JURISDICTION: N.Y. POLICE DEPT

TIME & DATE OF OCCURRENCE: 15:00 ON 04/29/97 METHOD:

PREMISES: COMMERCIAL BUILDING LOCATION: 1058 BEDFORD AV

ARRESTING OFFICER INFORMATION

NAME: DONDCHUE DENIS C RANK: POM TAX NUMBER: 899155 SHIELD: 05572

DEPT: NYPD CMD: SATNOPS CHART: OTHER SQUAD: 01 ASON: INVS

OFFICER: INJURED? NO ASSIGNED? NO ON DUTY? YES IN UNIFORM? NO

USED FORCE? NO TYPE: REASON:

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS

CERTIFICATE OF DISPOSITION
NUMBER: 75518

THE PEOPLE OF THE STATE OF NEW YORK
VS

TURPIN PAUL

11/28/1962

DEFENDANT

DATE OF BIRTH

53 CHAUNCEY ST

004256978H

ADDRESS

NYSID NUMBER

BROOKLYN

NY

04/29/1997

CITY

STATE ZIP

DATE OF ARREST/ISSUE

DOCKET NUMBER: 97K034399

SUMMONS NO:

220.03

ARRAIGNMENT CHARGES

CASE DISPOSITION INFORMATION:

DATE	COURT ACTION	JUDGE	PART
04/30/1997	PLED GUILTY & SENTENCE IMPOSED PG 220.03 IMPRISONMENT=7D	SMITH, K	APAR2

I HEREBY CERTIFY THAT THIS IS A TRUE EXCERPT OF THE RECORD ON FILE IN
THIS COURT.

COURT OFFICIAL SIGNATURE AND SEAL

05/23/2001

DATE

FEE: NONE

(CAUTION: THIS DOCUMENT IS NOT OFFICIAL UNLESS EMBOSSED WITH THE COURT
SEAL OVER THE SIGNATURE OF THE COURT OFFICIAL.)

EXHIBIT 2

NEW YORK CITY POLICE DEPT ARREST REPORT RUN DATE 05/23/01 RUN TIME 10:30:25

DEFENDANT INFORMATION ARREST ID: K96034943
 NAME: TURPIN PAUL SEX: M RACE: BLACK DOB: 11/28/68 AGE: 27
 AKA: SMITH, RALPH CITIZ? YES POB: NEW YORK PHONE: (718) 399-7241

ADDR: 302 QUINCY ST BKLYN NY RES PCT: 079
 SKIN TONE: DARK HGT: 5'07" WGT: 145 EYE COLOR: BROWN HAIR COLOR: BLACK
 SOC STATUS: SINGLE SOC SEC #: 129-48-5727 DEFT/VICT RELAT: NONE
 PHYSICAL COND: APPARENTLY NORMAL TYPE DRUG USED: CRACK
 OCCUPATIONAL AREA: NONE
 LICENSE/PERMIT-TYPE(EXC DRIVER/OPR/REG): NO:
 CALLS: NO: NAME: NO: NAME:
 ORACLE# 18370945 NYSID# 4256778H FAX# K0025454 ARR.PROC: A/D, PRIS. PRESENT, C

 NARRATIVE: WHILE EXECUTING A BENCH WARR-DEF -DKT#96K015893
 AND 96K012603- DEF WAS FOUND HIDDING IN THE CLOSET
 W/FOUND NARCAITICS ON DEF BED-BWTN BED/MATTRESS.

CHARGES INFORMATION

	ATT	LAW	SEC	SUB	CLS	TYPE	CTS	DESCRIPTION
TOP CHARGE-->	N	PL	220.06	01	F	D	01	CPCS-5
TOTAL CHARGES	N	PL	220.31	00	F	D	01	CSCS-5
COUNT = 05	N	PL	205.30	00	M	A	01	RESIST ARREST
	N	PL	195.05	00	M	A	01	QBS GOVT ADMN 2
	N	PL	220.03	00	M	A	01	CPCS-7

ARREST RELATED INFORMATION | DAT? NO
 TIME 07:43 DATE 05/09/96 CMD 079 *****
 WEAPON POSS/USED: NONE ARREST LOC: 302 QUINCY ST
 NUM OF ASSOC: 02 ASSOC ARREST-IDS #1: #2:
 PROPERTY VOUCHERS:
 1 NO: G389867 CMD: 079 VAL: UNKNOWN TYP: DRUGS/NARCOTICS
 2 NO: G389866 CMD: 079 VAL: UNKNOWN TYP: CURRENCY - US

COMPLAINANT/UF-61/VICTIM INFORMATION
 IS COMPL A CORP? NO OR PSNY? YES OR DISABLED? NO TOTAL VICTIMS = 00
 COMPL NAME: _____
 ADDR: _____ TEL NUM: (____) _____
 AIDED NO: _____ AIDED CMD: _____ ACC NO: _____ ACC CMD: _____
 UF-61: NO: 999999 CMD: 079 SECTOR: XX JURISDICTION: N.Y. POLICE DEPT
 TIME & DATE OF OCCURRENCE: 07:43 ON 05/09/96 METHOD: _____
 PREMISES: RESIDENCE APT/HOME LOCATION: 302 QUINCY ST

ARRESTING OFFICER INFORMATION
 NAME: ROSADO SONIA RANK: POF TAX NUMBER: 907205 SHIELD: 20343
 DEPT: NYPD CMD: 079 PCT CHART: UNKNOWN SQUAD: 90 ASSN: UNIFO

OFFICER: INJURED? NO ASSIGNED? NO ON DUTY? YES IN UNIFORM? NO
 USED FORCE? NO TYPE: REASON:

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS

CERTIFICATE OF DISPOSITION
NUMBER: 75519

THE PEOPLE OF THE STATE OF NEW YORK
VS

TURPIN PAUL

11/28/1968

DEFENDANT

DATE OF BIRTH

302 QUINCY ST

004256978H

ADDRESS

NYSID NUMBER

BKLYN

NY

05/09/1996

CITY

STATE ZIP

DATE OF ARREST/ISSUE

DOCKET NUMBER: 96K035409

SUMMONS NO:

220.03 205.30 220.03

ARRAIGNMENT CHARGES

CASE DISPOSITION INFORMATION:

DATE	COURT ACTION	JUDGE	PART
05/10/1996	PLED GUILTY & SENTENCE IMPOSED PG 220.03 IMPRISONMENT=10D	ROONEY,S	APAR3A

I HEREBY CERTIFY THAT THIS IS A TRUE EXCERPT OF THE RECORD ON FILE IN
THIS COURT.

COURT OFFICIAL SIGNATURE AND SEAL

05/23/2001

DATE

FEE: NONE

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SEAL OVER THE SIGNATURE OF THE COURT OFFICIAL.)

EXHIBIT 3

NEW YORK CITY POLICE DEPT ARREST REPORT RUN DATE 05/28/01 RUN TIME 10:28:52

DEFENDANT INFORMATION

ARREST ID: Q82008135

NAME: TURPIN PAUL SEX: M RACE: BLACK DOB: 11/28/59 AGE: 22
AKA: CHRIST CITIZ? YES POB: PHONE: ()ADDR: 104-41 142 STREET JAMAICA NY RES PCT: 103
SKIN TONE: DARK HGT: 5'07" WGT: 140 EYE COLOR: BROWN HAIR COLOR: BROWN
SOC STATUS: SINGLE SOC SEC #: DEFT/VICT RELAT: NONE
PHYSICAL COND: APPARENTLY NORMAL TYPE DRUG USED: NONE
OCCUPATIONAL AREA: NONE
LICENSE/PERMIT-TYPE(EXC DRIVER/OPR/REG): NO:
CALLS: NO: (212)322-6937 NAME: ELIZABETH NO: NAME:
ORACLE# 16302942 NYSID# 4256978H FAX# ARR.PROC:NARRATIVE: DEFT A/C AT T/P/D DEFT DID LOITER AT A DRUG PRONE
LOCATION WITH 4 OTHERS FOR THE PURPOSE OF POSS & S
ELLING DRUGS & DID HAVE HERION IN HIS POSS.

CHARGES INFORMATION

	ATT	LAW	SEC	SUB	CLS	TYPE	CTS	DESCRIPTION
TOP CHARGE-->	N	PL	220.09	01	F	C	01	CPCS-4
TOTAL CHARGES	N	PL	220.03	00	M	A	01	CPCS-7
COUNT = 03	N	PL	240.36	00	M	B	01	LOITERING-1

ARREST RELATED INFORMATION

TIME 17:40 DATE 04/29/82 CHD 103
WEAPON POSS/USED: NONE ARREST LOC: 107-21 SUTPHIN BLVD.
NUM OF ASSOC: 04 ASSOC ARREST-IDS #1: Q82008135 #2: Q82008137 #3: Q82008139
PROPERTY VOUCHERS:

1 NO: B173028	CMD: 103	VAL: LT \$100	TYP: CURRENCY - US
2 NO: B173029	CMD: 103	VAL: N/A	TYP: COCAINE & DERIVATIVE
3 NO: B173030	CMD: 103	VAL: N/A	TYP: COCAINE & DERIVATIVE

COMPLAINANT/UF-41/VICTIM INFORMATION

IS COMPL A CORP? NO OR PSNY? YES OR DISABLED? NO TOTAL VICTIMS = 00

COMPL NAME: TEL NUM: ()

ADDR: AIDED NO: AIDED CMD: ACC NO: ACC CMD:

UF-41: NO: 005084 CMD: 103 SECTOR: M JURISDICTION: N.Y. POLICE DEPT

TIME & DATE OF OCCURRENCE: 17:40 ON 04/27/82 METHOD:

PREMISES: STREET LOCATION: NOT ENTERED ON DATABASE

ARRESTING OFFICER INFORMATION

NAME: MARKART WILLIAM J RANK: POM TAX NUMBER: 841409 SHIELD:
DEPT: NYPD CMD: 103 PCT CHART: ACU DUTY CT SQUAD: 99 ASSN: INVSTOFFICER: INJURED? NO ASSIGNED? NO ON DUTY? YES IN UNIFORM? NO
USED FORCE? NO TYPE: REASON:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

CERTIFICATE OF
DISPOSITION

13834

THE PEOPLE OF THE STATE OF
NEW YORK

against

Paul Turpin
Defendant

NO FEE

On Indictment *8170-82* for

No. *DOCKET # 28009231*
ARREST # 10308138182
Filed *ARREST DATE 4-29-82* 19

I DO CERTIFY that it appears from an examination of the Records on file in this office,

That on *4-19-84* 19 the defendant was convicted of the crime of
Criminal Poss Controlled Sub 50

Felony
a Misdemeanor

That on *5-10-94* 19 upon the aforesaid conviction by *Pla*
the Honorable *Brennan*, then a Justice of this Court, sentenced the defendant to

1-3 year NY SOC

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this *24* day of

MAY 19 2001

Gloria D. [Signature]
County Clerk and Clerk of the Supreme Court,
Queens County.

NO FEE
FOR OFFICIAL USE

EXHIBIT 4

CRIMINAL COURT OF THE CITY OF NEW YORK
 CERTIFICATE OF DISPOSITION

F 446486

NO FEE

Docket Number 4Q 000201 Year 84

THE PEOPLE OF THE STATE OF NEW YORK

VS.

Name Ralph Smith Date of Birth/Age 20

Address 2201 Andrew Ave, BRONX City/State Zip

Date of Offense 1-3-84

Original Offense(s) PL 220.16

Final Offense(s) PL 220.03

D
I
S
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O
N

PLEA Guilty
90 days JAIL

Date of Disposition 4-19-84 Date of Sentence 4-19-84

Part Queens County Judge O'Donoghue

NO FEE CERTIFICATION

☐ Government Agency ☐ Counsel Assigned ☐ No record of attorney readily available. Defendant states counsel was assigned. SOURCE: ☐ Accusatory Instrument ☐ Docket Book/CRIMS ☐ CRC 3030 [CRC 963]

ISSUED BY:

Part CCO County Queens Date 5-24-01

I hereby certify that this is a true excerpt of the record on file in this Court.

Court Official (Signature) B. Felch Title S.C.C.

CRC 3039 (11/92) [CRC 225G]

NEW YORK CITY POLICE DEPT ARREST REPORT RUN DATE 05/23/01 RUN TIME 10:29:45

DEFENDANT INFORMATION

ARREST ID: 064000145

NAME: SMITH RALPH SEX: M RACE: BLACK DOB: 11/28/63 AGE: 20
AKA: CITIZ? YES POB: NEW YORK PHONE: ()

ADDR: 2201 ANDREW AVE BRONX NY RES PCT: 046
SKIN TONE: MEDIUM HGT: 5'09" WGT: 135 EYE COLOR: BROWN HAIR COLOR: BLACK
SOC STATUS: SINGLE SOC SEC #: 129-47-2848 DEFT/VICT RELAT: UNKNOWN
PHYSICAL COND: UNKNOWN TYPE DRUG USED: NONE
OCCUPATIONAL AREA: NONE
LICENSE/PERMIT-TYPE(EXC DRIVER/OPR/REG): NO:
CALLS: NO: (212)365-7731 NAME: SUE NO: NAME:
ORACLE# 17350942 NYSID# 4256978H FAX# ARR.PROC: A/O, PRIS. PRESENT, C

NARRATIVE: DEFT A/C WAS IN POSS OF 17 TIN FOILS OF COCAINE IN
EXCESS OF 1/8 OZ PACKAGED IN A WAY COMMONLY WRAP-
PED FOR INDIVIDUAL SALE.

CHARGES INFORMATION

	ATT	LAW	SEC	SUB	CLS	TYPE	CTS	DESCRIPTION
TOP CHARGE-->	N	PL	220.16	01	F	B	01	CPCS-3
TOTAL CHARGES	N	PL	220.03	00	M	A	01	CPCS-7
COUNT = 02	-	-	-	-	-	-	-	-
	-	-	-	-	-	-	-	-
	-	-	-	-	-	-	-	-

ARREST RELATED INFORMATION

TIME 13:50 DATE 01/03/84 CMD 103 *****
WEAPON POSS/USED: NONE ARREST LOC: F/O 100 43 150 ST
NUM OF ASSOC: 00
PROPERTY VOUCHERS:
1 NO: B607163 CMD: 103 VAL: N/A TYP: DRUGS/NARCOTICS

COMPLAINANT/UF-61/VICTIM INFORMATION

IS COMPL A CORP? NO OR PSNY? YES OR DISABLED? NO TOTAL VICTIMS = 00
COMPL NAME:

ADDR: TEL NUM: ()
AIDED NO: AIDED CMD: ACC NO: ACC CMD:
UF-61: NO: 0000085 CMD: 103 SECTOR: 0M JURISDICTION: N.Y. POLICE DEPT
TIME & DATE OF OCCURRENCE: 13:50 ON 01/03/84 METHOD:
PREMISES: STREET LOCATION: F/O 100 43 150 ST

ARRESTING OFFICER INFORMATION

NAME: MARKART WILLIAM J RANK: POM TAX NUMBER: 641409 SHIELD: 04886
DEPT: NYPD CMD: 103 PCT CHART: OTHER SQUAD: 00 ASSN: OTHER

OFFICER: INJURED? NO ASSIGNED? NO ON DUTY? YES IN UNIFORM? NO
USED FORCE? NO TYPE: REASON:

EXHIBIT 5

Citation
NY PENAL S 220.03
McKinney's Penal Law § 220.03

Found Document

Rank 1 of 1

Database
NY-ST-ANN

▽

**MCKINNEY'S CONSOLIDATED LAWS OF NEW YORK ANNOTATED
PENAL LAW
CHAPTER 40 OF THE CONSOLIDATED LAWS
PART THREE--SPECIFIC OFFENSES
TITLE M--OFFENSES AGAINST PUBLIC HEALTH AND MORALS
ARTICLE 220--CONTROLLED SUBSTANCES OFFENSES**

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Current through L.2000

§ 220.03 Criminal possession of a controlled substance in the seventh degree

A person is guilty of criminal possession of a controlled substance in the seventh degree when he knowingly and unlawfully possesses a controlled substance.

Criminal possession of a controlled substance in the seventh degree is a class A misdemeanor.

CREDIT(S)

1999 Main Volume

(Added L.1973, c. 276, § 19; amended L.1978, c. 772, § 4; L.1979, c. 410, § 11.)

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1999 Main Volume

L.1979, c. 410 legislation

L.1979, c. 410, § 11, eff. Sept. 1, 1979, substituted "seventh" for "eighth" wherever appearing.

Derivation

Former § 220.05, added L.1965, c. 1030, § 1; amended L.1969, c. 788, § 1; and repealed by L.1973, c. 276, § 18. Said former § 220.05 was from Penal Law of 1909 §§ 1747-b, 1747-c, 1747-d, and 1751-a. Said § 1747-b, added L.1965, c. 323, § 4; and repealed by Penal Law § 500.05, was from a prior § 1747-b, added L.1946, c. 597, § 3; and repealed by L.1965, c. 323, § 3. Said § 1747-c was added L.1956, c. 644, § 1; and repealed by L.1965, c. 323, § 1. Said § 1747-d was added L.1965, c. 332, § 1; and repealed by Penal Law § 500.05. Said § 1751-a was added L.1938, c. 168, § 2; amended L.1954, c. 239, § 2; L.1956, c. 528, § 1; L.1957, c. 816, § 2; L.1957, c. 817, § 1; L.1962, c. 113, § 1; and repealed by Penal Law § 500.05.

PRACTICE COMMENTARY

1999 Main Volume

by William C. Donnino

EXHIBIT 6

Citation
 NY PENAL S 220.00
 McKinney's Penal Law § 220.00

Found Document

Rank 1 of 1

Database
 NY-ST-ANN

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**MCKINNEY'S CONSOLIDATED LAWS OF NEW YORK ANNOTATED
 PENAL LAW
 CHAPTER 40 OF THE CONSOLIDATED LAWS
 PART THREE--SPECIFIC OFFENSES
 TITLE M--OFFENSES AGAINST PUBLIC HEALTH AND MORALS
 ARTICLE 220--CONTROLLED SUBSTANCES OFFENSES**

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Current through L.2000

§ 220.00 Controlled substances; definitions

1. "Sell" means to sell, exchange, give or dispose of to another, or to offer or agree to do the same.
2. "Unlawfully" means in violation of article thirty-three of the public health law.
3. "Ounce" means an avoirdupois ounce as applied to solids or semisolids, [FN1] and a fluid ounce as applied to liquids.
4. "Pound" means an avoirdupois pound.
5. "Controlled substance" means any substance listed in schedule I, II, III, IV or V of section thirty-three hundred six of the public health law other than marihuana, but including concentrated cannabis as defined in paragraph (a) of subdivision four of section thirty-three hundred two of such law.
6. "Marihuana" means "marihuana" or "concentrated cannabis" as those terms are defined in section thirty-three hundred two of the public health law.
7. "Narcotic drug" means any controlled substance listed in schedule I(b), I(c), II(b) or II(c) other than methadone.
8. "Narcotic preparation" means any controlled substance listed in schedule III(d) or III(e).
9. "Hallucinogen" means any controlled substance listed in schedule I(d) (5), (18), (19), (20), (21) and (22).
10. "Hallucinogenic substance" means any controlled substance listed in schedule I(d) other than concentrated cannabis, lysergic acid diethylamide, or an hallucinogen.
11. "Stimulant" means any controlled substance listed in schedule I(f), II(d).
12. "Dangerous depressant" means any controlled substance listed in schedule I(e)(2), (3), II(e), III(c)(3) or IV(c)(2), (31), (32), (40).
13. "Depressant" means any controlled substance listed in schedule IV(c) except (c)(2), (31), (32), (40).
14. "School grounds" means (a) in or on or within any building, structure, athletic playing field, playground or land contained within the real property boundary line of a public or private elementary, parochial, intermediate, junior high, vocational, or high school, or (b) any area accessible to the public located within one thousand feet of the real property boundary line comprising any such school or any parked automobile or other parked vehicle located within one thousand feet of the real property boundary line comprising any such school. For the purposes of this section an

NY PENAL S 220.00

Page 5

"area accessible to the public" shall mean sidewalks, streets, parking lots, parks, playgrounds, stores and restaurants.

15. "Prescription for a controlled substance" means a direction or authorization, by means of an official New York state prescription form, a written prescription form or an oral prescription, which will permit a person to lawfully obtain a controlled substance from any person authorized to dispense controlled substances.

CREDIT(S)

1999 Main Volume

(Added L.1973, c. 276, § 19; amended L.1973, c. 1051, §§ 6, 7; L.1975, c. 785, § 1; L.1977, c. 360, § 4; L.1978, c. 772, § 3; L.1981, c. 455, § 3; L.1981, c. 474, § 3; L.1985, c. 341, § 1; L.1985, c. 664, § 2; L.1986, c. 118, § 1; L.1986, c. 280, § 3; L.1994, c. 292, § 1; L.1998, c. 537, § 13, eff. Nov. 1, 1998.)

[FN1] So in original. Probably should be "semi-solid".

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1999 Main Volume

L.1998, c. 537 legislation

Subd. 5. L.1998, c. 537, § 13, substituted "four" for "five".

L.1994, c. 292 legislation

Subd. 14. L.1994, c. 292, § 1, eff. Nov. 1, 1994, designated portion of existing subd. as subpar. (a), substituted subpar. (b) for provision including property within 1000 feet of property line and added sentence defining "area accessible to the public".

Derivation

Former § 220.00, added L.1972, c. 878, § 3; and repealed by L.1973, c. 276, § 18. Said former § 220.00 was from a prior § 220.00, added L.1965, c. 1030, §

NY PENAL S 220.03

Page 2

See Practice Commentary at the beginning of Penal Law article 220; it can be found in the General Material for this section.

PRACTICE COMMENTARIES CITED

1999 Main Volume

U.S. v. Neal, C.A.4 (W.Va.) 1994, 27 F.3d 90.

People v. Mizell, 1988, 72 N.Y.2d 651, 536 N.Y.S.2d 21, 532 N.E.2d 1249.

AMERICAN LAW REPORTS

Conviction of possession of illicit drugs found in premises of which defendant was in nonexclusive possession. 56 ALR3d 948.

Conviction of possession of illicit drugs found in automobile of which defendant was not sole occupant. 57 ALR3d 1319.

LIBRARY REFERENCES

1999 Main Volume

American Digest System

Drugs and Narcotics ¶62 to 67.

Encyclopedias

C.J.S. Drugs and Narcotics §§ 154 to 163, 166.

Texts and Treatises

33 NY Jur 2d, Criminal Law § 1446.

97 NY Jur 2d, Statutes § 183.

25 Am Jur 2d, Drugs, Narcotics, and Poisons §§ 2, 16, 17.

3 CJI (NY) PL 220.03 p 1674.

NOTES OF DECISIONS

Agency 10

Construction and application 2

Constructive possession 6

Elements of offense 3

Knowledge or intent 8

Lesser included offenses 4

Possession 5, 6

Possession - In general 5

Possession - Constructive possession 6

Quantity possessed 7

Unlawfulness of possession 9

Validity 1

1. Validity

Although there is disagreement regarding effects of marijuana, it would be inappropriate for a court to prematurely remove marijuana from the legislature's consideration by classifying its personal possession as constitutionally protected right; hence, defendant's possession in his home of nine marijuana plants was not constitutionally

NY PENAL S 220.03

Page 3

protected and resulting conviction of criminal possession of a controlled substance in the seventh degree did not violate his right to privacy. *People v. Shepard*, 1980, 50 N.Y.2d 640, 431 N.Y.S.2d 363, 409 N.E.2d 840.

2. Construction and application

Existence of statutory scheme in Public Health Law § 3300 et seq. delineated in Controlled Substances Act targeted essentially to civil prosecution of noncriminal offenses does not in any way bar district attorney from enforcing this section relating to narcotics enforcement, especially where additional material elements which must be proven to sustain a criminal conviction, viz., "knowing and unlawful" possession of controlled substance, are present. *People v. Garthaffner*, 1982, 115 Misc.2d 93, 454 N.Y.S.2d 583.

The reverse sale law enforcement technique for enforcing the controlled substances laws, whereby an undercover officer would sell a controlled substance to a purchaser and then arrest the purchaser for illegal possession of the controlled substance, is not authorized under New York law. Op.Atty.Gen. 86-F14.

3. Elements of offense

Buying drugs is not alone a crime, although buyer may be convicted of illegal possession. *People v. Lam Lek Chong*, 1978, 45 N.Y.2d 64, 407 N.Y.S.2d 674, 379 N.E.2d 200, certiorari denied 99 S.Ct. 330, 439 U.S. 935, 58 L.Ed.2d 331.

To sustain conviction of possession of controlled substance, in its simplest form, prosecution must prove beyond reasonable doubt the presence of controlled substance, that it was physically or constructively possessed by accused and that possession was knowing and unlawful. *People v. Sierra*, 1978, 45 N.Y.2d 56, 407 N.Y.S.2d 669, 379 N.E.2d 196.

Crime of possessing dangerous drugs requires a physical or constructive possession with actual knowledge of the nature of the possessed substance. *People v. Reisman*, 1971, 29 N.Y.2d 278, 327 N.Y.S.2d 342, 277 N.E.2d 396, certiorari denied 92 S.Ct. 1315, 405 U.S. 1041, 31 L.Ed.2d 582. See, also, *People v. Patello*, 1973, 41 A.D.2d 954, 344 N.Y.S.2d 33.

Actual or constructive possession, with actual knowledge of nature of

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**MCKINNEY'S CONSOLIDATED LAWS OF NEW YORK ANNOTATED
PENAL LAW
CHAPTER 40 OF THE CONSOLIDATED LAWS
PART THREE--SPECIFIC OFFENSES
TITLE M--OFFENSES AGAINST PUBLIC HEALTH AND MORALS
ARTICLE 220--CONTROLLED SUBSTANCES OFFENSES**

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Current through L.2000

§ 220.06 Criminal possession of a controlled substance in the fifth degree

A person is guilty of criminal possession of a controlled substance in the fifth degree when he knowingly and unlawfully possesses:

1. a controlled substance with intent to sell it; or
2. one or more preparations, compounds, mixtures or substances containing a narcotic preparation and said preparations, compounds, mixtures or substances are of an aggregate weight of one-half ounce or more; or
3. phencyclidine and said phencyclidine weighs fifty milligrams or more; or
4. one or more preparations, compounds, mixtures or substances containing concentrated cannabis as defined in paragraph (a) of subdivision four of section thirty-three hundred two of the public health law and said preparations, compounds, mixtures or substances are of an aggregate weight of one-fourth ounce or more; or
5. cocaine and said cocaine weighs five hundred milligrams or more.
6. ketamine and said ketamine weighs more than one thousand milligrams; or
7. ketamine and has previously been convicted of possession or the attempt to commit possession of ketamine in any amount.

Criminal possession of a controlled substance in the fifth degree is a class D felony.

CREDIT(S)

1999 Main Volume

(Added L.1973, c. 276, § 19; amended L.1973, c. 1051, § 8; L.1977, c. 360, § 5; L.1978, c. 772, § 6; L.1979, c. 410, § 11; L.1985, c. 341, § 3; L.1988, c. 178, § 1; L.1995, c. 75, § 1; L.1997, c. 635, § 3, eff. Jan. 22, 1998; L.1998, c. 537, § 14, eff. Nov. 1, 1998.)

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1999 Main Volume

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

PAUL TURPIN,) Civil No. 1:CV-01-0168
)
Petitioner,)
) (Judge Rambo)
v.)
)
IMMIGRATION & NATURALIZATION)
SERVICE,)
Respondent.)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion to be competent to serve papers.


That this 8th day of June 2001, she served a copy of the attached

**EXHIBITS TO RESPONDENT'S SUPPLEMENTAL RESPONSE
TO PETITION FOR A WRIT OF HABEAS CORPUS**

by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Harrisburg, Pennsylvania.

ADDRESSEE(S)

Daniel Siegel, Esquire
Federal Public Defender's Office
100 Chestnut Street
Suite 306
Harrisburg, PA 17101


Dawn L. Mayko
Legal Secretary